THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.2588 of 2007

Date: 18.06.2007

Between:

M/s. Sai Ram Carriers.

....Petitioner

And

Additional Registrar and others.

....Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.2588 of 2007

O R D E R:

Respondents 4 and 5 borrowed separate loans from M/s. Vasavi Co-operative Urban Bank Limited, second respondent herein, which is now under liquidation. The petitioner stood as one of the guarantors, for repayment of the loans. Since respondents 4 and 5 committed default, the second respondent initiated proceedings for recovery. The property mortgaged by the petitioner was brought under sale and in fact, the prospective purchaser was also identified. Certain correspondence ensued between the petitioner and the second respondent. The second respondent introduced One Time Settlement Scheme III (for short 'the Scheme'), sometime in May 2006, as an incentive for the borrowers to repay their loans. The conditions, subject to which the facility will be extended, were stipulated in the Scheme. The last date for submission of applications was stipulated as 06.06.2006 and it was extended subsequently.

The petitioner submitted an application for extension of the benefit under the Scheme, for repayment of the loans borrowed by respondents 4 and 5. As a sequel to the correspondence with the second respondent, the petitioner addressed a letter, dated 11.05.2006, expressing its willingness for the sale of mortgaged property in favour of M/s. G.R.Thanga Maligai (P) Limited, provided, it is extended the benefit of the Scheme and the sale consideration is directly remitted to the second respondent-Bank.

The property mortgaged by the petitioner was ultimately sold for a sum of Rs.23,12,24,584/-, sometime in May 2006. The two loans borrowed by respondents 4 and 5 stood discharged and to that effect, a clearance certificate, dated 26.05.2006, was issued by the second respondent. The grievance of the petitioner is that when it approached for refund of the balance amount, by extending the facility under the Scheme, a reply was issued by the second respondent, stating that the petitioner is not entitled for the benefit under the Scheme, on the ground that the loans were Director related ones. The communication to this effect was issued on 06.12.2006. The petitioner challenges the same

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On behalf of the second respondent, a counter affidavit is filed. The fact that the respondents 4 and 5 borrowed loans and the petitioner stood as guarantor, for repayment of the same, is not disputed. It was also admitted that the Scheme was introduced with certain guidelines. However, it is pleaded that during the course of verification, it emerged that the loans in favour of respondents 4 and 5 were sanctioned with the intervention of certain Directors and thereby, the petitioner is not entitled for the benefit under the Scheme.

Heard Sri S.Satyanarayana Prasad, learned senior counsel for the petitioner, Sri G.Vidya Sagar, the learned counsel for the second respondent and Sri B.Nalin Kumar, the learned counsel for the 6th respondent.

It is a matter of record that respondents 4 and 5 borrowed two loans from the second respondent and the petitioner stood as guarantor. Since there was default on the part of respondents 4 and 5, the property mortgaged by the petitioner came to be sold. The consideration received therefor was more than what was needed to liquidate the two loans. The second respondent is naturally under obligation to pay the petitioner, the balance of the amount. The controversy arose as to the extent of the amount, to be paid to the petitioner.

It is not in dispute that the second respondent introduced the Scheme, providing certain benefits to the borrowers. However, certain categories of loans were excluded from the purview of the Scheme, such as those extended to the Ex-directors and their relatives. In case, the benefit under the Scheme is extended for the loans borrowed by respondents 4 and 5, the amount repayable to the petitioner would be more. On the other hand, if it is denied, the amount would be correspondingly less. The reply given to the petitioner, while denying the benefit under the Scheme, reads as under:

> *"With reference to your letters dated 11.05.2006 and 06.11.2006 your application for consideration of OTS against the discharge of loan amount pertaining to M/s. Maheshwari Enterprises and M/s. Bhargavi Enterprises from out of the sale proceeds of Begumpet land has not been considered favourably since you have offered the mortgage of your property to the Director related loans in the above cases."*

Therefore, the only question is as to whether the petitioner falls into any one of the excluded categories mentioned in the Scheme.

In the counter affidavit, the second respondent did not state that either respondents 4 and 5 or the petitioner are Directors of its management, nor it was alleged that

any one of them are related to the Directors. On a vague and improper interpretation of the first category, mentioned in the Scheme, the transaction, for which the petitioner is guarantor, is treated as “directors related account”. Obviously, this is a category outside those specified under the Scheme. Therefore, the stand taken by the second respondent, through the impugned letter cannot be countenanced.

Hence, the Writ Petition is allowed and the impugned letter is set aside. The second respondent shall consider the matter afresh, as regards extension of the benefit under the Scheme, and pass fresh orders within a period of two (2) weeks from today. In case, the petitioner is found eligible and extended the benefit under the Scheme, it shall be refunded the corresponding balance amount within a period of two (2) weeks thereafter. There shall be no order as to costs.

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18.06.2007

JSU